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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,464	08/31/2006	Stanley George Bonney	PB60781USw	5790
23347	7590	08/06/2009	EXAMINER	
GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398			CAMPBELL, VICTORIA P	
			ART UNIT	PAPER NUMBER
			3763	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USCIPRTP@GSK.COM  
LAURA.M.MCCULLEN@GSK.COM  
JULIE.D.MCFALLS@GSK.COM

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,464	<b>Applicant(s)</b> BONNEY ET AL.	
	<b>Examiner</b> VICTORIA P. CAMPBELL	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-553 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/31/06 5/29/09</u>   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is the initial Office Action based on the 10/598464 application filed August 31, 2006. Claims 1-53 as presented in the Preliminary Amendment are currently pending and considered below.

#### ***Information Disclosure Statement***

1. The information disclosure statement filed August 31, 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

#### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Objections***

3. Claim 14 is objected to because of the following informalities: the claim does not end in a period ---. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3, 6, 8, 10, 11, 13, 15-36, and 42-47 are rejected under 35 U.S.C. 102(e) as being anticipated by USPGPub 2007/0095853 A1 to Bonney et al.

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) **might** be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 3, 6, 8, 10, 11, 13, and 15-29, Bonney et al disclose a fluid dispensing device having: a dispensing outlet (27), a supply of fluid product (2), a dispensing member (56) mounted for movement in a dispensing direction along an axis, and a finger-operable actuator (101) mounted for movement in an actuating direction which is generally transverse to the axis (F), wherein the actuator member has at least one cam surface (129a, 129b) and the dispensing member has at least one cam

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follower surface (135a, 135b), wherein the actuator is movable in the actuating direction (F) to cause the at least one cam surface to bear against the at least one cam follower surface to cam this dispensing member from a first position to a second position (Figs. 2A-2I), wherein the at least one cam surface has a commitment section at a first angle to the axis and an adjacent drive section at a second angle to the axis which is greater than the first angle (see figure reproduced below), wherein the device is configured such that the at least one cam follower surface successively rides over the commitment and drive sections (Figs. 2A-2I).

Furthermore, Bonney et al disclose that the commitment section is planar (each small portion of curvature is a plane), that the drive section has an arcuate transition portion contiguous with the commitment section, or is arcuate itself (Fig. 2A'), and that the commitment section is of a first length and the drive section is of a greater second length. Bonney et al also disclose that the at least one cam follower surface is arcuate (Fig. 2A'), that the actuator member is mounted in the device for movement on an arcuate path in the actuating direction (pivots about P1), that the first angle to the axis becomes steeper as the actuator member moves in the actuating direction, and that the second angle remains substantially constant as the actuator member moves in the actuating direction.

Bonney et al further disclose that the actuator member is mounted for pivotal movement about a first end (105) and the at least one cam surface is remote from the first end, wherein the dispensing direction is an upward direction and the first end of the actuator is at a lower end thereof and the cam follower is disposed toward an upper end

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of the dispensing member (Fig. 2F). Further, Bonney et al disclose that the dispensing member is a dispensing container in which the supply of fluid product is contained (56, 2; Fig. 2A) and that the dispensing container has a pump (upper portion between the reservoir and the nozzle) and that the actuator member is the sole actuator (Fig. 1).

Additionally, Bonney et al disclose that the dispensing outlet is a nozzle sized and shaped for insertion into a nostril of a human or animal body (Paragraph [0065]) and that the fluid product is a medicament (Paragraph [0003]). Further, Bonney et al disclose that the dispensing member and housing have cooperating guide members for guiding movement of the dispensing member along the axis wherein the members prevent rotation of the dispensing member and comprise a runner and a track (inside of nozzle and outside of the pump portion of the dispensing unit).

Regarding claims 30-36, Bonney et al disclose a fluid dispensing device having: a dispensing outlet (27), a supply of fluid product (2), a dispensing member (56) mounted for movement in a dispensing direction along an axis, a finger-operable actuator (101) mounted for movement in an actuating direction (F) which is generally transverse to the axis, wherein the actuator member has at least one cam surface (129a, 129b) and the dispensing member has at least one cam follower surface (135a, 135b), wherein the actuator member is movable in the actuating direction (F) to cause the at least one cam surface to bear against the at least one cam follower surface to cause this dispensing member in the dispensing direction (Figs. 2A-2I), and wherein the actuator member further has a stop to stop the dispensing member being movable along the axis in a direction opposite the dispensing direction beyond a predetermined

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axial position to provide alignment of the at least one cam surface and the at least one cam follower surface (133a, 133b). Bonney et al further disclose that the stop comprises at least one stop surface engagable with a respective surface of the dispensing member (Fig. 2I), wherein the at least one stop surface extends generally transversely to the axis (Fig. 2I), wherein the at least one stop surface forms a continuation of the at least one cam surface (all a part of the drive system 109), wherein the at least one surface of the dispensing member forms a continuation of the at least one cam follower surface (135a, 135b), and wherein the at least one cam surface is provided by a nose of the actuator member (109) and the at least one stop surface is a tip portion of the nose section (Fig. 2I).

Regarding claims 42-47, Bonney et al disclose a fluid dispenser having a nozzle sized and shaped for insertion into a nostril (19, Paragraph [0063]), and a housing (3) in which the fluid product is containable, wherein the housing has an opening in which the nozzle is received (15) and a fastening mechanism which fastens the nozzle in the opening (lower and upper ridges (see Fig. 1). Bonney et al further disclose that the housing houses a dispensing container (56) having the fluid product (2) wherein the nozzle has an outlet passageway (27) and the dispensing member (pump portion) and outlet are in direct fluid communication and engaged (Fig. 2A). Bonney et al also disclose that the fastening mechanism has a clamp member which clamps the nozzle in the opening (housing half) wherein the nozzle has a flange (lower rim, see Fig. 1) abutting an inner surface of the housing (15), wherein the claim member fastens the flange to the inner surface and the clamp member is a collar structure (upper and lower

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rings) being bent or folded over the flange (in formation) to claim the flange to the inner surface (Fig. 2A).

6. Claims 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by USPGPub 2002/0170928 A1 to Grychowski et al.

Regarding the above claims, Grychowski et al disclose a fluid dispenser having a nozzle (8) sized and shaped for insertion into a nostril and a housing in which the fluid product is containable (102) and an opening in which the nozzle is receivable wherein the nozzle is made of a different material (such as a different plastic) from the housing (Paragraph [0185]).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.



9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 2, 4, 5, 7, 9, 10, 12, and 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Bonney et al.

Regarding the above claims, Bonney et al disclose the device of claims 1 and 8 as described above, but fail to teach or disclose specific values for the actuating force, first or second angles, or radius of curvature. At the time of invention, however, it would have been obvious to one having ordinary skill to choose the particular claimed values, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

11. Claims 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grychowski et al in view of USPGPub 2005/0211241 A1 to Anderson et al.

Regarding the above claims, Grychowski et al teach a fluid dispensing device having a housing (102) with a dispensing outlet (not labeled, end of nozzle) adapted to receive therein a container (6) for containing the fluid product for movement along an

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axis from a rest position to a dispensing position (Figs. 15-16), the housing having an access opening (base of the device) through which the dispensing container is insertable during a rest position (at the time of manufacture) and at least one finger-operable actuator (120) mounted in the housing for movement inwardly with respect to the housing (Fig. 16) to cause the dispensing container to move, wherein the actuator member is movable from an outward position, enabling dispensing container insertion, to an inward position, which prevents insertion (Fig. 16). Grychowski et al fail to explicitly teach a releasable detent mechanism for holding the actuator in the inward and outward positions. However, Anderson et al teach use of a locking mechanism (Paragraph [0123]). At the time of invention, it would have been obvious to one having ordinary skill in the art to add a locking detent mechanism such as that disclosed by Anderson et al to the dispenser disclosed by Grychowski et al in order to prevent accidental discharge of the device (Paragraph [0123]).

12. Claims 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grychowski et al in view of USPN 6,305,371 B1 to Frid et al.

Regarding the above claims, Grychowski et al teach a set of component parts for manufacturing a plurality of fluid dispensers comprising a plurality of nozzles (8) sized and shaped for use in the nostril (Abstract), and a plurality of housings (102) wherein teach nozzle is identical, and each housing has an opening for a nozzle. Grychowski et al do not necessarily disclose different housings with different characteristics. However, Frid et al disclose device for administering medicament wherein the housings can have different characteristics, including but not limited to color, shape, or a different

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medicament formulation (Col. 1, lines 43-57 and Col. 3, lines 15-55). At the time of invention it would have been obvious to one having ordinary skill in the art to combine the nasal applicator of Grychowski et al with the differing characteristics of Frid et al in order to easily distinguish applicators for different medications or for different users.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell  
Examiner, AU 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763